

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

W26b



Filed:	4/10/01
Hearing Open:	5/07/01
49th day:	5/29/01
180 Day:	10/07/01
49-Day Waiver:	6/20/01
Staff:	CKC
Staff report:	10/25/01
Hearing date:	11/14/01

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

Local government:.....Monterey County

Local Decision:.....Resolution 000160, Approved with conditions (see Exhibit F)

Appeal NumberA-3-MCO-01-035

Applicant.....Charlene Felos

Appellants:Commissioners Sara Wan and Pedro Nava

Project location.....24304 San Juan Road, Carmel Woods (APN 009-031-009), Carmel Area of Monterey County (see Exhibits A, B, C, D, and E)

Project description.....Conversion of test well to permanent water-supply well to serve future residential use previously approved (PLN970141) with water to be supplied by the California-American Water Company (see Exhibits E and F).

File documents.....County coastal permit file PLN000160 and PLN970141; Monterey County Local Coastal Program, including *Carmel Area Land Use Plan* and *Monterey County Coastal Implementation Plan* (Title 20 of County Code).

Staff recommendation**Project raises a Substantial Issue; denial of *de novo* permit application.**

Summary of Staff Recommendation:

Staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed, and that an application for a de novo coastal development permit be **denied**.

The County's approval of the project as described in Resolution 000160 is inconsistent with LCP policies that require urban land uses located within urban areas to be served by public sewer and water services, and with LCP policies for groundwater resource protection. Therefore, staff recommends that the Commission find that **a substantial issue exists** with regards to land use and development, i.e., that the project does not conform to policies that require residential development within the urban boundary to be served by public water services. The California-American Water Company (Cal-Am) is the water



California Coastal Commission
November 2001 Meeting in Los Angeles

Staff: CKC Approved by:

C:\DOCUME~1\mfrum\LOCALS~1\Temp\A-3-MCO-01-035 (Felos) SI DeNovo stfprt 10.25.01.doc

company authorized to provide water in the urban service area of Monterey County and is regulating the orderly connection of water service for new development. Since water supplies are limited, the County Water Resources Agency administers a water waiting list for additional connections beyond which can presently be served. The applicant is number 63 on the County's water waiting list. The County's approval of this permit essentially amends the earlier coastal development permit (Resolution 970141; Exhibit G) for residential development on the site, which had originally proposed to hook up to the public Cal-Am water utility when their number on the waiting list was reached. As Resolution 000160 changes that requirement and allows use of a water well to serve residential development in the urban boundary rather than require hookup to the public water utility, this action constitutes a changed circumstance to the earlier permit, inconsistent with LCP policies. Authorization of private wells within this public service area, whether for potable water or supplemental non-potable water for irrigation purposes, are not allowed by the LCP and could lead to potential cumulative impacts that could undermine Cal-Am's ability to provide adequate water supplies to existing service connections within the Monterey Peninsula Water Management District. For all of the reasons listed above, staff recommends that the Commission deny the de novo application for conversion of a test well to a permanent water supply well to serve previously approved residential development within the urban Carmel Woods area.

Staff Report Contents

Summary of Staff Recommendation:	1
I. Local Government Action.....	3
II. Summary of Appellants' Contentions.....	4
III. Standard of Review for Appeals	4
IV. Staff Recommendation on Substantial Issue.....	4
V. Staff Recommendation on De Novo Permit	5
VI. Recommended Findings and Declarations	5
A. Project Location	5
B. Project Description and Background	6
C. Analysis of Appeal Issues	9
1. Land Use and Development	9
A. Appellant's Contentions	9
B. Local Coastal Program Provisions	9
C. Local Government Action.....	10
D. Substantial Issue Analysis and Conclusion.....	10
Planning Principle	10
LCP Policy Application.....	11
2. Water Availability, Supply and Intensification of Use.....	15
A. Appellant's Contentions	15
B. Local Coastal Program Provisions	15
C. Local Government Action.....	16
D. Substantial Issue Analysis and Conclusion.....	17
3. Environmentally Sensitive Habitat Areas (ESHA)	18



A. Appellant's Contentions	19
B. Local Coastal Program Provisions	19
C. Local Government Action.....	19
D. Substantial Issue Analysis and Conclusion.....	19
D. Public Access and Recreation Findings.....	21
E. De Novo Coastal Permit Findings	21
F. California Environmental Quality Act (CEQA).....	22

IV. Exhibits

- A. Regional Location Map
- B. Project Vicinity Map
- C. Pescadero Watershed Map – Showing location of well
- D. Assessors Parcel Map
- E. Carmel Area Land Use Plan Map
- F. County Permit Findings And Conditions from Resolution 000160
- G. County Permit Findings and Conditions from Resolution 970141
- H. County Permit Application Form and Water Release Application Form
- I. Appellant's Contentions for Appeal of Resolution 000160
- J. Applicant's Correspondence in Response to Appeal including Hydrologic Report and Pump Test
- K. MPWMD Map of Monterey Peninsula Water Management District
- L. Cal-Am Water Waiting List
- M. Cal-Am Service Area Index and Detail maps
- N. MPWMD Groundwater Source Map
- O. Excerpt from Staff Report to Monterey County Board of Supervisors for PLN980614, dated 5/11/99
- P. MPWMD letter to Monterey County Board of Supervisors, dated 9/21/99
- Q. MPWMD Requirements for Well Capacity Test Procedures in Fractured Bedrock Formations

I. Local Government Action

The action taken by Monterey County (Resolution 000160; Exhibit F) allowed for the conversion of a test well to a permanent residential water supply well for the property located at 24304 San Juan Road in the Carmel Woods area of Monterey County. This action essentially amended an earlier coastal development permit (Resolution 970141; Exhibit G) for the development of a house on the site that was, at the time it was approved, proposing to hook up to the public Cal-Am water utility when their number on the waiting list was reached (Exhibit H). The earlier permit was also conditioned by the County to demonstrate evidence of water service prior to the issuance of a building permit. The current proposal is now to serve the approved, but-not-yet-constructed, home with water from a private, on-site well.



II. Summary of Appellants' Contentions

The appellants, Commissioner's Wan and Nava, have appealed the final action taken by Monterey County Planning Commission (Resolution 000160), on the basis that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan with regards to land use and development, water resources and environmentally sensitive (riparian) habitats. The complete text of the appellant's contentions can be found in Exhibit I. Correspondence in response to the appeal is located in Exhibit J.

III. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea. Here, San Juan Road is considered the nearest public road to the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "NO" vote on the following motion:

"I move that the Commission determine that Appeal No. A-3-MCO-01-035, which is essentially an amendment to an earlier Coastal Development Permit (PLN000160), raises **no** substantial issue with respect to the grounds on which the appeal has been filed."



A majority of the Commissioners present is required to pass the motion, failure of the motion, as recommended by staff will result in Commission jurisdiction over the project and adoption of the following findings.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the Felos well coastal development permit.

MOTION: Staff recommends a “**No**” vote on the following motion:

“I move that the Commission **APPROVE** coastal development permit A-3-MCO-01-035, as submitted.

A majority of the Commissioners present is required to pass the motion. A no vote will result in the adoption of the following resolution and findings:

RESOLUTION:

The Commission hereby **denies** permit A-3-MCO-01-035, which allows the conversion of a test well to a permanent water supply-well and essentially amends a previously approved Coastal Development Permit for residential development on the site that had originally required hookup to the public water utility, Cal-Am, on the grounds that the development will not conform with the policies of the Monterey County Certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location

The existing test well is located on a 0.388 acre (14,723 sq. ft) parcel located at 24304 San Juan Road (APN 009-031-009-000). The parcel, owned by Ms. Charlene Felos, is located between the City of Carmel and the Del Monte Forest, north of San Juan Road, and just south of Pescadero Canyon, in the Carmel Woods area of Monterey County (Exhibits B, C, and D).

The parcel is located in the Coastal Zone and is zoned for Medium Density Residential use with a maximum density of 2 units per acre (MDR/2 (CZ)), as shown on Exhibit E. According to the Initial Study Determination prepared for the project by the County planner, the parcel “...has been maintained in its natural state with some grading for a driveway and a small building pad...” that is located on a fairly



level area of the parcel. Development surrounding the project site consists of single-family homes and a large cliff to the west of the parcel, at the top of the Pescadero Creek canyon. Pescadero Creek lies approximately 1,000 feet to the west of the test well site.

The vacant parcel is located in an unincorporated portion of the County that lies north of the City of Carmel, west of Highway One. Land use and development in this area are regulated by policies defined in the Carmel Area Land Use Plan (LUP). The property is one of very few vacant parcels remaining in Carmel Woods. As described in the Carmel Area LUP, the property is located in an urban area, where sewer, water, transit and fire protection services already exist.

B. Project Description and Background

In November 1997, the applicant applied to Monterey County for a coastal development permit for residential development to be served by Cal-Am water (Exhibit H). In the 1997 permit application, the applicant, Ms. Charlene Felos, stated that the water for the project would be served by Cal-Am. The local government file for this project also includes her application to be placed on the waiting list for Cal-Am water administered by the County Water Resources Agency (Exhibit H).

The Coastal Administrative Permit (PLN970141, 3-MCO-98-018; see Exhibit G) was approved February 11, 1998, for the construction of a two-story single family dwelling with attached studio, tree removal (6) and grading (approx. 220 cubic yards). The permit for the single family dwelling indicated that due to limited availability of water, the Monterey County Water Resources Agency (WRA) was unable to allocate any water to the project at that time. Recognizing the water shortage on the Monterey Peninsula, the County approved this permit on the condition that development would not begin until water was available from Cal-Am to serve the development. This earlier permit was, therefore, not appealed to the Coastal Commission because the County had conditioned it to require proof of water availability from the Monterey County Water Resources Agency in the form of an approved Water Release Form before the building permit could be issued.

Following completion of a water release form and application for a water permit, the applicant was placed on the water waiting list in December 1997. The Monterey County Water Resources Agency administers the water waiting list on a first-come-first-serve basis, as additional water becomes available. The applicant is currently number 63 on the water waiting list (see Exhibit L).

The applicant subsequently requested to drill a test well in April 14, 2000, and was granted a waiver from coastal development permit requirements by Monterey County to drill the test well on April 14, 2000. By the granting of a waiver, Monterey County recognized that construction of a test well required a coastal development permit under the definition of development. However, the waiver of this test well was never noticed to the Commission. Moreover, there are no specific policies in the LCP that grant the County the authority to waive coastal development permits, or to exempt test wells from requiring a permit. Water wells, whether test wells or permanent wells, are considered development under the Coastal Act Section 30106 and Monterey County LCP Section 20.06.310 definition of development, and both coastal Act and LCP definitions specifically cite “change in the intensity or use of water” as development. Furthermore,



Monterey County LCP Section 20.06.310 of Title 20, specifically states that the “construction of water wells” is considered development.

Nevertheless, the test well has since been drilled, and the applicant now proposes to use the private, on-site well to serve the approved home rather than Cal-Am water which was the understanding when the original project was approved. Monterey County Resolution 000160 (Exhibit F) approved the conversion of the test well to a permanent water supply well for the residential development permit approved earlier (PLN970141; Exhibit G). Because the original permit application for residential development specifically identified a different source of water for the house, the Commission considers the proposed conversion of the test well to be a substantial change to the proposed development. The Commission therefore considers the County’s approval of the test well to a permanent water supply well to essentially be an amendment to the earlier coastal development permit for residential development.

Status of Water on the Monterey Peninsula

Following the severe drought conditions in the late 1970’s, voters approved the formation of the Monterey Peninsula Water Management District (MPWMD) to regulate water resources in the Monterey Peninsula. The MPWMD regulates the collection, storage, distribution and delivery of water within the 170-square mile area of the water management district, which stretches from Seaside in the north to Los Padres Dam in the south (Exhibit K). All of the water used within the Monterey Peninsula Water Management District comes from the Carmel River and wells in the Carmel Valley and Seaside Basin. The MPWMD allocates water from these sources to the various water companies and smaller local jurisdictions. The largest water distribution system is operated by the California-American Water Company (Cal-Am; see Exhibit M), which provides water to nearly 95 percent of the 112,000 residents in the Monterey Peninsula Water Management District.

Over 80 percent of the water supplied by Cal-Am is produced within the MPWMD area; the other 20 percent is supplied from private wells and water companies owned by Cal-Am outside of the MPWMD boundaries. The Cal-Am Water Company has plant facilities that include 36 wells, two reservoirs, and numerous storage tanks, pumping stations and pressure regulation stations. Within the MPWMD 71 percent of the Cal-Am water supply comes from wells in the Carmel Valley and Seaside Aquifers, while 29 percent comes from the San Clemente and Los Padres Dams and Reservoirs.

In 1995, the State Water Resources Control Board Order 95-10 reduced the amount of water Cal-Am could take from the Carmel River aquifer by 20 percent in the near-term and up to 75 percent in the long-term. The MPWMD requested relief through the courts, but the Monterey County Superior Court upheld the 20 percent reduction in water use specified by the order. Since that time, the County has been under strict conservation measures, and has focused its efforts on improving water conservation programs while working on other water supply augmentation proposals that will garner community support and help Cal-Am attain the goals established by the Order.

The MPWMD allocation program currently limits production by Cal-Am to 15,285-acre feet of water per year within the MPWMD boundaries (which includes 11,285 acre-feet from the Carmel River alluvial aquifer, and 4,000 acre-feet from the Seaside Basin). All of this water is already allocated to current



users or proposed construction that has already been approved, and no additional water source is presently available to serve Cal-Am customers within the district.

The Monterey County Water Resources Agency administers a water waiting list for Cal-Am water that may become available due to reduction in use from other sites or some future increase in supply (Exhibit L). The list operates on a first-come-first-serve basis. The applicant has been on the water waiting list since November 1997, and is currently number 63 out of a total of 101 applicants. Currently, the first applicant on the water waiting list has been on the list since July of 1996, and the last applicant on the list has been on the list since July 2001. Since the applicant wishes to proceed with development now, she has requested converting the test well to a permanent water supply well for the residential development previously approved on the lot.

Pursuant to MPWMD Ordinance 96, the MPWMD regulates small water distribution systems including single connection systems that serve only one lot. Ordinance 96 requires all persons to obtain a written permit from the MPWMD prior to establishing a water distribution system within the water management district. However, the permit requirement is exempted for wells located more than 1,000 feet outside of the Carmel Valley alluvial aquifer, more than 1,000 feet outside of the major tributaries to the Carmel River (i.e., Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon and Potrero Creeks), or for wells outside of the Seaside Coastal Basin areas. As shown on Exhibit K, the existing test well is located more than 1,000 feet outside of the Carmel Valley alluvial aquifer, and any of its major tributaries. Therefore the existing well is exempt from requiring a MPWMD well permit. The MPWMD, therefore, does not require any environmental review for such a well, but does require that applicants first obtain other required permits, including a coastal development permit and a permit from the Division of Environmental Health, and requires reports of annual water production. The County approval however does not include the requirement for reporting annual production in any of the permit conditions.

According to Cal-Am, there are currently 677 lots in the Carmel Woods area, with 665 lots served by Cal-Am and 12 lots currently without water service. A 1998 report on the estimated future water needed for buildable legal lots of record on vacant parcels within the Cal-Am service area states that approximately 923 acre-feet of water would be needed for new buildings as of January 1997 and remodels through the year 2006 (MPWMD 1999 Annual Report). The MPWMD has since been working on completing an update of this report, and while the 2001 update is not yet published, the agency has determined that approximately 1,400 acre-feet of water would be needed for the existing vacant legal lots of record on unimproved parcels within the MPWMD boundaries (Pers Comm Henrietta Stern, MPWMD). Additional water needed for unincorporated County areas with existing vacant legal lots of record that have some improvements on them (such as small sheds or other such structures) have not yet been calculated. However, it is expected that the total water requirement would be somewhat greater than 1,400 acre-feet.

Cal-Am and the MPWMD are currently searching for additional water supplies. Current alternative strategies include implementation of groundwater injection (e.g., storage of excess water from the Carmel River in the Seaside Coastal Basin during winter months), wastewater recycling (i.e., using reclaimed wastewater for irrigation purposes), and water conservation efforts that include retrofitting or replacing water-using appliances and fixtures and drought resistant landscaping.



C. Analysis of Appeal Issues

1. Land Use and Development

A. Appellant's Contentions

Appellants Wan and Nava contend in part that:

The project is located within the Cal-Am service area in an area designated for medium-density residential development.... Approval of a well would conflict with Carmel Area Land Use Plan policy 4.4.3.E.[2].

The appellants also contend that there would be potential cumulative impacts on the groundwater in the area from other wells, if individual wells were allowed in such an urban area.

B. Local Coastal Program Provisions

The Carmel Area Land Use Plan (LUP) policy 4.4.3.E.[2] states in part:

LUP Policy 4.4.3.E.2. *Medium-density residential development shall be directed to existing residential areas where urban services – water, sewer, public transit, fire protection, etc., - **are available**... (emphasis added)*

Additional related policies of the Carmel Area LUP include the following:

LUP Policy 2.4.4.A.1. *New development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well. At the County's discretion, applicants may be required to submit a hydrologic report certifying sustained yield of the water source to serve new development **outside of existing water utility service areas**... (emphasis added)*

Because of the need to provide different policies for the rural and urban portions of the Carmel Area, the County has included the following land use policy that defines the dividing line between these two types of low (rural) and high (urban) intensity land uses:

LUP Policy 4.4.2.1. *The Carmel River shall be considered the dividing line between the urban and rural areas of the Monterey Peninsula. The river shall provide the natural boundary between urban and higher intensity uses to the north and rural, lower intensity uses to the south.*

Additionally, Section 4.5 of the Carmel Area LUP describes Land Use Categories and notes the following:

"...the capabilities and constraints of the various areas of the Carmel area to support various types and densities of land uses are reflected in the land use map. Land uses have been designated based on an evaluation of existing uses, appropriate levels of use to protect coastal resources, and levels of development that can be accommodated by public works systems such as water supplies and coastal access roads."



C. Local Government Action

The County's action (Resolution 000160) allows for the conversion of a test well to a permanent residential water supply well for the property located at 24304 San Juan Road (APN 009-031-009-000). Because it would enable the applicant to demonstrate a water supply, it would also allow development to commence on the single family residence (which had been approved conditioned on the provision of a water supply), despite the fact that the original application that was approved by the County stated that water would come from Cal-Am. Thus the County's approval of Resolution 000160 simultaneously amends the terms of that prior permit (PLN970141).

D. Substantial Issue Analysis and Conclusion

Planning Principle

This case raises issues with regards to fundamental planning principles embodied in the Coastal Act. While planning principles, per se, are not the standard of review for appeals of coastal development permits, it is important to understand these principles as they provide the underlying basis for correctly interpreting the Coastal Act and Local Coastal Program policies raised by cases such as this appeal. Since Local Coastal Program policies must address the planning principles articulated in the Coastal Act, the LCP policies must also reflect the same planning principles.

One of the fundamental principles of the Coastal Act, as well as modern urban and environmental planning, is the establishment and maintenance of stable urban/rural boundaries. Benefits of stable urban/rural boundaries include the prevention of urban sprawl, protection of agricultural land, efficient use of all land, and the rational planning and construction of urban infrastructure (e.g., roads, utilities, and sanitation systems) to support urban intensities of land use. Urban-level intensity land uses are then directed to locate within urban areas, preserving rural lands for low intensity rural land uses. Obviously, the services that are required to support urban uses (e.g., water storage/conveyance/treatment systems, sewer connections, wastewater treatment plants, etc.) are greater and different than those needed for rural land uses (e.g., small wells and individual septic systems). Coastal Act policy 30250 states this premise as follows:

***Section 30250(a)** New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas **able to accommodate it** or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.... (emphasis added)*

This policy provides that if an urban area lacks critical infrastructure - e.g., water, sewer, or road capacity - to support any more urban development, then that new development must be delayed until the capacity of the limited service can be increased, through a comprehensive urban planning process, in order to support it. It does not mean that urban uses should proceed incrementally, using what are essentially rural-level services (e.g., private wells and septic systems). The proliferation of rural services within an urban area causes practical problems (e.g., wells run dry, lot sizes are too small to accommodate septic systems for very long), and planning problems, because it limits the ability of public



service providers to rationally plan and implement public works projects because the body of users is essentially unknown.

Ordinarily, when an urban jurisdiction temporarily lacks an essential urban service such as water or sewer service, a moratorium on new development is put in place until additional water supplies can be found or until the municipal sewage treatment plant can be enlarged. Those who wish to develop usually are placed on a waiting list and, as the service constraints lessen, are allowed to proceed in the order of their place on the list. This system is currently in place in the Monterey Peninsula and Cambria for example.

In the recent past, there have been sewer and water moratoria in Half Moon Bay and Morro Bay. The enlargement of the sewage treatment plant in Half Moon Bay allowed new development to proceed as did the acquisition of "State Water" in Morro Bay. Although moratoriums are inconvenient to those who wish to develop immediately, they are temporary events that allow local sanitation or water districts the time to plan and provide the necessary urban services.

As required by the Coastal Act, Local Coastal Plans must also include policies that address Coastal Act issues – such as the establishment of stable urban/rural boundaries and the policy to locate new urban development within urban areas that are able to accommodate additional development. The Carmel Area Land Use Plan has addressed this issue by specifically establishing both rural and urban portions of the land use planning area. The project that is the subject of this appeal is located within the urban portion of the Carmel Area Plan. As discussed in greater detail in pages 11 to 15, the Carmel Area LUP provides that urban use, such as medium density residential development, shall be directed to the urban area and shall use public services. In the rural portions of the planning area, densities of land use, with the exception of a few existing, more intensely developed residential enclaves, are much lower than in the urban area. The LUP thus contains policies relevant to the anticipated use of both urban- and rural-level services for water and sewage disposal for new development in the Carmel area.

LCP Policy Application

Water is an important coastal resource, especially within the Monterey Peninsula area where water supplies are limited. The purpose of the Carmel Area LUP Key policy 4.4.1¹ is to regulate development so that it protects water and other natural coastal resources for all people of the State of California, as well as the residents and visitors of the Carmel Area.

In order to protect water supplies and other various coastal resources within the unincorporated areas of Monterey County, the County has planned for specific land uses in specific areas. As part of these planning efforts, the County has determined that higher-density development would be allowed in urban

¹ **LUP Key Policy 4.4.1.** All future development within the Carmel Coastal Segment must be clearly consistent with and subordinate to the foremost priority of protecting the area's scenic beauty and natural resource values.



areas where multiple units per acre may be developed, and less intensive uses allowed in rural areas where development can be spread across fewer, larger parcels. Because of the high density of development planned in urban areas, the County has also planned that the necessary infrastructure would provide urban services such as water, sewer, public transit, fire protection, etc., rather than allow individual property owners to each develop their own utility systems. In rural areas, on the other hand, where development is less intensive, such shared utility infrastructure is not required, would be prohibitively expensive and would encourage urban sprawl. Therefore, the County allows development of private or small mutual utility systems within rural areas, but requires that development in urban areas be allowed only where adequate urban services exist (LCP policies 2.4.4.A.1 and 4.4.3.E.2).

As shown in the Carmel Area Land Use Plan Map (Exhibit E), the MDR designation is used both in the urban area north of the Carmel River and in the rural area south of the river where isolated pockets of residential development that pre-exist certification of the LCP are located (e.g., Yankee Point and Carmel Highlands). Small mutual water systems and individual septic tanks serve development in these rural residential areas.

The subject parcel is located in the Carmel Woods area, however, which lies north of the Carmel River and is thereby designated for urban density residential use based on the definition provided by LUP Policy 4.4.2.1. All of the Carmel Woods area is zoned MDR/2 (CZ), or Medium Density Residential, two units per acre maximum gross density, and is located within the service area of the California-American Water Company (Cal-Am), which is the largest water purveyor in Monterey County.

Regulations for the Medium Density Residential zoning district (MDR (CZ)) are found in the Coastal Implementation Plan (CIP) of the Monterey County LCP. Title 20, Chapter 20.12 of the CIP details the principal uses allowed in MDR (CZ) districts, which are located in both rural and urban portions of the land use area. In addition to single family residential use, the MDR zoning district includes, among other things, the development of “water system facilities including wells and storage tanks serving up to 14 or fewer service connections, pursuant to Title 15.04, Monterey County Code....” However, the Monterey County CIP must be read together with the policies of the LUP. In this case, the more specific LUP Policy 4.4.3.E.2 precludes the private well use allowed by the more general zoning provisions of the MDR zone district in urban areas by requiring that residential development be located in existing residential areas “.... where urban services – water, sewer, public transit, fire protection, etc., - are available.” Therefore, the CIP provides that private water systems can be developed in MDR areas outside of urban areas, i.e., in rural MDR zoned areas south of the Carmel River, but that residential development within urban areas must be served by existing urban services. LUP Policy 2.4.4.A.1 also specifies that hydrologic reports are required only for new development outside of existing water utility service areas; implying that all new development within existing water utility service areas would be served by existing utilities within existing urban service areas and thus hydrologic reports are irrelevant as private wells are not allowed.

The LCP therefore requires that residential development, in urban areas, located within urban service areas, will use urban services. By so doing, the County is able to manage development given the environmental constraints that prevail within specific planning areas. In this case, the County has a public management system in place for water service in the urban service area, and the previous coastal development permit for residential development of the subject site was conditioned to use this public



water service. Here, the public management system for water is operating as it should, by requiring new development to wait on the water waiting list until the capacity of the limited water service can be increased or be reallocated from water use reductions elsewhere in the water service area. As discussed previously, because of environmental constraints on water withdrawals from the Carmel River, the MPWMD allocation program currently limits water production by Cal-Am. Additionally, all of the water allocated to Cal-Am is already assigned to current users or proposed construction that has already been approved, and no additional water source is presently available to provide additional water for Cal-Am customers. Since water is temporarily unavailable, the County's system requires that individuals wishing to apply for new development or remodels of existing development must wait, either for water to be reallocated from other existing sources, as occurs from time to time, or for new water sources to be developed by the urban utility service. Approval of a private water supply well within the urban service area would thereby undermine this public water management system by allowing incremental development to proceed prior to the comprehensive planning process necessary to develop additional water supplies.

Furthermore, the Monterey County Local Coastal Program (LCP) has no provisions for alternative utility services such as individual water wells to be drilled in urban service areas. Again, LUP policy 2.4.4.A.1 and 4.4.3.E.2 require that urban density residential development shall be located where "...adequate water is available from a water utility..." and where "urban services... are available...."

Additionally, there is a concern that fractured granite bedrock, which underlies much of the Monterey Peninsula, may not provide a reliable water source for private wells and failure of such wells could lead to increased demands on the public water system, which without additional water supplies could cause a water emergency within the entire Cal-Am service area. In fact, in a similar case in an urban area of the Del Monte Forest Land Use Area (the Firman Brown well request; PLN 980614), the Monterey County Planning and Building Inspection Department noted in a May 11, 1999 staff report to the Board of Supervisors (Exhibit O) that:

"...the Environmental Health Division is concerned that a private water well is not a reliable source of water based on the bedrock composition of granite underlying the Del Monte Forest area, which creates inconsistent groundwater pumping between dry and wet years. Development based upon a short term and intermittent water supply is not good policy and may predispose a water emergency. Water use for single family dwellings should utilize the public water system..."

This request for a private water well was subsequently denied by the County. The proposed well subject to this appeal is located approximately a mile and a half away from the Firman-Brown well denied in the Del Monte Forest, and the same fractured granite bedrock found in the Del Monte Forest area also underlies the Carmel Woods area and the subject parcel.

The MPWMD has also raised concerns regarding development of domestic water wells in fractured bedrock formations within the District, as indicated in their September 21, 1999 letter (Exhibit P) to the Monterey County Board of Supervisors:



“...The District is concerned that, as more building permits are approved on the basis of potable water service supplied by individual domestic wells completed in fractured bedrock, there is a significant risk that these well supplies could fail over time. These failures could result in a situation where increased demands are placed upon the Cal-Am system to “bail out” property owners that find themselves without an adequate potable water supply due to the loss of their individual well sources...”

The statements above indicate that the development of private wells inside of the Cal-Am water service area could undermine the public utility’s ability to provide adequate water supply to existing service connections, such that the potential cumulative impact of allowing private wells in public service areas could include the failure of the public water supply system due to the bail-out of failed wells. These points illustrate why LUP policy 4.4.3.E.2 requires that urban development use urban services. Additionally, drilling individual wells on such small lots as those found in the Carmel Woods area is not very practical, given the density of development in this area and the limited access for well drilling rigs to get out on many of these lots to repair or replace failed wells.

As described above, the current projected water demand for vacant parcels located within the Cal-Am service area is somewhat more than 1,400 acre-feet. If each of these parcels were allowed a well, the withdrawal of 1,400 acre feet of water could lead to adverse environmental impacts to the Carmel River and possibly overdraft of groundwater supplies which could lead to the failure of the existing public water system. Additionally, the potential for the other 100 persons on the water waiting list, and any other persons wishing to drill a well for supplemental potable or non-potable water could have significant adverse cumulative effects on the water supply used to service existing connections, and on groundwater supplies that must also be protected for coastal-dependent and coastal-priority uses as well as to protect and maintain riparian vegetation and fishery resources.

As in other coastal areas constrained by water supplies, such as Cambria in San Luis Obispo County, Monterey County does have a process for obtaining water. The Monterey County Water Resources Agency administers a water waiting list that operates on a first-come-first-served basis. The applicant is on the waiting list and is currently number 63 out of 101 people on the list. While constrained by the MPWMD water allocation program (as described below), Cal-Am is the water company authorized to provide water in the urban service area of the County and is regulating the orderly connection of water service for new development.

Finally, with regards to the possibility of additional wells being approved within fractured bedrock, the MPWMD indicated in their September 21, 1999 letter, that:

“...If additional water well permit applications are to be approved in fractured bedrock formations, it is our belief that a more comprehensive approach should be taken to evaluate long-term water supply reliability. In particular, this approach is appropriate for areas poised for more concentrated well development, such as the Del Monte forest area. This approach would require the completion of an independent hydrogeologic evaluation, prior to further consideration of water well permit applications for such areas....”



As described in the alternatives discussion in Section D, below, one approach to evaluating the long-term water supply reliability is through the LCP amendment process.

As described above, authorizing the development of private wells inside of the Cal-Am water service area is not consistent with LUP policies 4.4.3.E.2, 2.4.4.A1 and 4.4.2.1. LUP policy 4.4.2.1 defines that portion of the Carmel Land Use Plan area north of the Carmel River as urban, and LUP policies 4.4.3.E.2 and 2.4.4.A.1 require that new development in urban areas use urban services and be allowed only where adequate water is available from the water utility. Approvals of private water supply wells within the urban service areas could potentially undermine the public utility's ability to provide adequate water supply to existing connections within the Cal-Am service area. Therefore, the County's approval for conversion of a test well to a permanent water supply well for a previously approved residential development conditioned to use water provided by Cal-Am raises a substantial issue because land use and development policies of the Carmel Area Land Use Plan do not allow for such uses in urban residential areas served by urban services.

2. Water Availability, Supply and Intensification of Use

A. Appellant's Contentions

Appellants Wan and Nava contend in part that:

If for some reason a well was potentially appropriate for the site, the Carmel Area Land Use Plan policy 2.4.4.A.2 must be satisfied.

B. Local Coastal Program Provisions

LUP Policy 2.4.4.A.2 provides the following:

LUP Policy 2.4.4.A.2. *As part of the permit process, the applicant must also demonstrate that the proposed new water use or use intensification will not adversely affect both the natural supply necessary to maintain the environment, including wildlife, fish, and plant communities, and the supply available to meet the minimum needs of existing users during the driest year. At the County's discretion, the applicant may be required to support his application through certification by a consultant deemed qualified by the County to make such determinations. The County will request that the Department of Fish and Game provide a written recommendation on each application.*

Other relevant water resource policies include the following:

2.4.2 Key Water Resources Policy

LUP Policy 2.4.2. *The water quality of the Carmel area's coastal streams and of the Point Lobos and Carmel Bay Areas of Special Biological Significance shall be protected and maintained. Instream flows should be protected in order to maintain the natural plant community and fish and wildlife. In general, the County will require adherence to the best watershed planning principles, including: stream setbacks, stream flow maintenance, performance controls for development site features, maintenance of safe and good water*



quality, protection of natural vegetation along streams, and careful control of grading to minimize erosion and sedimentation.

2.4.4 Specific Policies regarding Water Availability

LUP Policy 2.4.4.A.1. *New development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well. At the County's discretion, applicants may be required to submit a hydrologic report certifying sustained yield of the water source to serve new development outside of existing water utility service areas.*

The Carmel Area LUP also provides an overview of water supply in the Carmel Land Use Plan area, as well as specific water supply policies:

3.2.1 Water Supply Overview

With the exception of Carmel Riviera, the residential areas of the Carmel area have domestic water supplied by the California American Water Company (Cal-Am). This utility also serves the six cities and other unincorporated portions of the Monterey Peninsula area. ... Under a "fair-share" water allocation system, the County will be allocated a specific proportion of the total available supply to be used to serve growth in the unincorporated portions of the Cal-Am service area. A proposed wastewater reclamation project by the Carmel Sanitary District would make available an additional 900 acre feet of potable water now used for irrigation of golf courses. It has not yet been determined as to how this potential additional supply will be distributed within the unincorporated area.

Coastal Act policies require that where public works facilities can accommodate only a limited amount of new development, coastal-dependent land uses, including recreation and visitor-serving uses, shall not be precluded by non-priority residential development.

3.2.3 Specific Policies regarding Water Supply

LUP Policy 3.2.3.1. *The County shall reserve adequate water supply from its fair share allotment of Cal-Am water as approved by the Monterey Peninsula Water Management District to supply expansion of existing and development of new visitor-serving facilities permitted by the plan. Water must be first assured for coastal-priority visitor-serving facilities before allowing any new residential development other than infilling of existing vacant lots. ...*

LUP Policy 3.2.3.4. *Wells or other measures for monitoring salt-water intrusion are permitted...* (emphasis added)

C. Local Government Action

The County's action (Resolution 000160) allows for the conversion of a test well to a permanent water supply well for the residential parcel located at 24304 San Juan Road and is essentially an amendment to an earlier CDP for a single family residence on the site (PLN 970141; Exhibit G). The earlier CDP stated that water service for the new home would be provided by Cal-Am. The County's resolution includes conditions that require the applicant to provide Monterey County Water Resources Agency with information on the water system to serve the project, including the location of all water wells, any well



logs available and the number of current hookups. It also requires the applicant to obtain a final approval of the water well drilling program from the Monterey County Department of Environmental Health.

D. Substantial Issue Analysis and Conclusion

While the above LCP policies do not really apply in this case because a private well may not be used to service new development in urban areas where urban utility services are in place, they show the kinds of land use planning and environmental considerations necessary to ensure that the intensification of water use will not have significant adverse effects on coastal resources. For example, LUP Policy 2.4.4.A.1 clearly envisions that hydrologic reports are required to certify the sustained yield of a water source intended to serve new development *outside of existing water utility service areas* and LUP Policy 2.4.4.A.2 requires that the applicant would have to show that such a well would not have adverse impacts on the natural environment and water supplies available.

Although the test well was drilled inside an existing service area, the applicant nonetheless obtained a hydrologic survey and report of the test well in response to this appeal. Most of the hydrologic and geologic information provided by the applicant's representative, Mr. Rich Evans, was obtained from the July 6, 2001 letter report provided by Mr. Gary Weigand, PE., of Utility Services in Monterey, and is based on information gathered from well logs and pumping tests (Exhibit J).

Based on well logs submitted, the test well was drilled from an elevation of approximately 600 feet MSL to an elevation of approximately 10 feet MSL, for a total length of 590 feet. The vertical well was drilled through multiple zones of fractured and hard rock, clay and mudstone, and bottomed in an area of "hard loose granite" (presumably weathered or fractured granite). The report indicated that the water producing zones of the well are most likely contained in two confined layers of soft fractured rock located 265 to 290 and 473 to 550 feet below the surface. The hydrologist indicates that due to the structural geology of the area, and westward dip of the underlying formations, water is believed to flow from this location west into the ocean, confined by overlying layers of clay and hard rock. MPWMD staff indicated that a complete hydrogeological analysis of the information would require more time and resources than they had available at the time, however based on a brief review of the materials provided, they did indicate that the well was located outside of the Carmel River alluvial aquifer and so would not directly affect groundwater resources in the Carmel River alluvial aquifer. However, the MPWMD also noted that the well was located in an area of fractured bedrock substrate and submitted their September 21, 1999 letter stating their concerns about the potential failure of wells drilled in such formations (see discussion in Section C.1.D above).

The Monterey County Division of Environmental Health has specific procedures for determining well capacity in fractured bedrock formations (Exhibit Q), which include a minimum of a 72-hour, continuous well capacity (pumping) test. The well capacity test procedures also require that a representative of the Division of Environmental Health witness the tests. Materials submitted by the applicant's representative indicate that three pump tests were conducted July 20, 2000 and July 3 and July 4, 2001. The log for the July 2000 pump test indicates that the well was pumped for a total of 2 hours and 45 minutes at a rate of 10 gallons per minute. Additional pumping was conducted on July 3, 2001 for approximately 12 hours, and on July 4, 2001 for approximately 10.5 hours. Reported results of the July 2001 pump tests indicate



that after 10 to 12 hours of continuous pumping at 9 gpm, the water level dropped approximately four feet, and recovered following pump shut-down to the initial static water level after about 10 minutes. There is no indication that the pump tests were conducted according to County procedures. Therefore, since the pump tests that were conducted on site were not run for a significantly shorter period of time than required, they may not accurately represent long-term well capacity.

Although the test well is located within an existing water utility service area, the well draws water from outside the Cal-Am water source area (that is, outside of the Carmel River alluvial aquifer, Seaside Coastal Basin, and San Clement Dam; see Exhibit M). As the well is located outside of the main water sources of the Cal-Am service area, it is not expected to have direct impacts on the groundwater sources that serve the existing public water system.

However, as described above, the MPWMD has raised concerns about allowing the development of domestic wells completed in fractured bedrock formations, as is the case here, since there is a significant risk that these water supplies could fail over time. Failure of this well could increase the burden of the water utility company to “bail out” the property owner by supplying water to the residence if this occurs. An emergency “bail out” could add additional burden to groundwater resources drawn elsewhere by the water utility in order to provide for this additional residential use that otherwise would not have been served by the utility until adequate resources for new development was available. Additionally, the cumulative effect of the other 100 applicants on the water waiting list being allowed to drill individual water supply wells within the water utility service area would add a significant burden to the amount of groundwater being drawn from limited water supplies available. Such activities could increase the potential for multiple “bail-outs”, and could potentially impact the riparian resources of the Carmel River because the water needed to serve the homes with failed wells would have to come from either the Cal-Am wells along the Carmel River or the Seaside wells.

Although the applicant has shown that the water source of the proposed residential well is outside of the Cal-Am source area, the project is located within the Cal-Am service area, where LUP policies (4.4.3.E.2 and 2.4.4.A.1) require that water be supplied by an existing water utility service. Approval of the earlier coastal development permit for the single family dwelling on this parcel was conditioned upon the residence obtaining water from Cal-Am, as shown in Exhibit H, and the applicant was aware of this requirement at the initial application phase of the permit process. While the LUP policy 2.4.4.A.1 does provide for the possibility of developing a well outside of an existing service area, the LUP does not include any policies allowing the development of a private well within an urban area where a water service utility does exist. In this case, the project being proposed is not for new development outside of an existing service area, but rather to support residential development located within an existing public service area, and therefore the project does not conform to LUP policies 2.4.4.A.1, 3.2.3 or 3.2.3.4. Since there is a risk that approval of this well may fail over time due to the potential short term and intermittent source of water supply, it is possible that approval of this well and others that may follow may result in additional over-drafting of the Carmel River aquifer, thus affecting water resources in the river and associated riparian areas. Therefore, staff recommends that the project does raise a substantial issue with regard to water resources.

3. Environmentally Sensitive Habitat Areas (ESHA)



A. Appellant's Contentions

Appellants Wan and Nava contend in part that:

The site is located in Pescadero Canyon. Pescadero Creek could be adversely impacted. it is unclear if riparian setbacks are being maintained... The proposed project may not be in compliance with ... Section 2.3.4 of the Carmel Area LUP under "Riparian Corridors.."

B. Local Coastal Program Provisions

The LCP defines environmentally sensitive habitats as

... areas in which plant or animal life or their habitats are rare or especially valuable because of their special nature or role in an ecosystem.

Environmentally sensitive habitat areas (ESHA) listed in the Carmel Area LUP include riparian corridors, and Areas of Special Biological Significance (ASBS) as identified by the State Water resources Control Board (SWRCB).

The following policies of the Carmel Area Land Use Plan address ESHA policies with regard to riparian corridors:

LUP Policy 2.3.4. Riparian Corridors

LUP Policy 2.3.4.1. *Riparian plant communities shall be protected by establishing setbacks consisting of a 150-foot open space buffer zone on each side of the bank of perennial streams and 50 feet on each side of the bank of intermittent streams, or the extent of riparian vegetation, whichever is greater. ...*

LUP Policy 2.3.4.2. *The State Water Quality Control Board and the California Department of Fish and Game, in coordination with the County of Monterey, should establish and reserve instream flows sufficient to protect and maintain riparian vegetation, fishery resources and adequate recharge levels for protection of groundwater supplies. ...*

C. Local Government Action

The County's action (Resolution 000160) allows for a permanent water-supply well for future residential use on the parcel located at 24304 San Juan Road. The County's resolution makes no statement as to the location of the well in relation to the Pescadero Creek, nor to its potential impact to stream flows in the creek.

D. Substantial Issue Analysis and Conclusion

According to the applicant, the well is located approximately 1,000 feet from the Pescadero Canyon (as shown in Exhibit C), and so is adequately beyond the riparian corridor buffer area as required by the LUP.



The hydrologic report submitted by Utility Service, July 6, 2001 (see Exhibit J, pg 13-20) describes the Pescadero Creek as an intermittent stream that flows only following significant rainfall. However, the hydrologist goes on to state that flows of between 6 to 10 gallons per minute (0.01 to 0.02 cubic feet per second) were measured at various locations along the creek on July 4, 2001 about three months after the last significant rainfall. Historically, Commission staff visits to the Pescadero Creek have observed low flows in the creek as late as September and October (Pers. Comm, Lee Otter), indicating that groundwater flow apparently does provide perennial or year round flow in the creek, albeit with very low dry-season flows.

The hydrological report submitted for this project also indicates that it is unlikely that the groundwater below the property contributes significantly to the total surface water flow in the Pescadero Creek, since the subject parcel is equivalent to only 0.05 percent of the watershed area (.338 acres of the 653-acre watershed).

While the hydrologist indicates that groundwater flow “probably flows west into the ocean,” no information is provided to show groundwater gradient in the area. The Commission’s staff geologist, however, has noted that since groundwater in a confined aquifer can flow along the strike of the formation as well as down dip, it is possible that groundwater can flow between the creek and the well. That is, depending on the groundwater flow characteristics of the aquifer, the potentiometric surface (analogous to the groundwater table in an unconfined aquifer) could be lowered with a corresponding lowering of flow levels in the Creek. However, no data are presented to show whether or not that would occur. On July 4, 2001, the static water level in the well was at an elevation of 317 feet. According to the hydrologist’s July 6, 2001 letter, no flow was observed in the creek above this elevation, but flows were observed in the creek just below this elevation, indicating that “...the static water level coincides with the surface water level in the canyon where the canyon cuts through the geologic formation.” The Commission staff geologist has stated that these water levels also indicate that the creek and the well are, therefore, hydrologically linked so that any change in the piezometric surface of the well may also affect the creek.

Since the pump tests described above were not completed for a minimum of 72 hours, they do not provide enough information to establish the draw down equilibrium that would be reached from steady pumping of the well, and are, therefore, not adequate to determine what impact residential pumping would have on instream flows in Pescadero Creek.

While the State Water Resources Control Board has established requirements for withdrawals from the Carmel River and alluvial aquifer in order to protect fishery resources and groundwater supplies, no requirements have been placed on stream flows of the Pescadero Canyon. According to the applicant’s representative, the Department of Fish and Game hydrologist indicated that there are no fish in the Pescadero Creek. The California Department of Fish and Game fisheries biologist in Monterey indicated that no fishery surveys have been conducted in this stream (Pers. Comm., Jennifer Nelsen), and Commission staff have not observed any fish on previous visits (Pers. Comm., Lee Otter).

Although the project is located sufficiently outside of the riparian corridor buffer, water levels in the creek could be affected by the withdrawals from the well, which could in turn potentially affect riparian habitat by depleting riparian vegetation of its water source. However, as adequate pump tests were not



conducted and no observations were made during the pump tests, it is not clear how much impact pumping will have on Pescadero Creek stream flows. As pumping from the well may affect creek levels, it is prudent to take a cautious approach to protect flow levels in Pescadero Creek. Therefore, a substantial issue exists with the project in regards to environmentally sensitive habitat areas.

There are additional concerns regarding the cumulative impact that approval of other private residential development reliant on water supply wells drilled within the Cal-Am service area might have on the riparian resources of the Carmel River. These concerns, as presented previously by the Division of Environmental Health and the MPWMD, are based on the potential that water supplies from wells drilled in fractured rock may fail in the long-term and force an emergency water situation, or “bail out” by Cal Am, which may result in overdraft from the Carmel River, and subsequent adverse impacts to the riparian resources of that river system.

D. Public Access and Recreation Findings

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of chapter 3 of the Coastal Act. The project is located seaward of the first public through road, which in this area is San Juan Road. Sections 30210-14 of the Coastal Act provide for maximizing public access to the coast. In accordance with other coastal Act policies, Section 30223 requires that upland areas necessary to support coastal recreation uses shall be reserved for such uses where feasible. Section 30212 also requires that public access from the nearest public roadway to the shoreline be provided for all new development projects except where adequate access exists nearby.

The project does not affect any existing public access in the Carmel Area. The site is located approximately 1.1 mile from the coast near the top of Pescadero Canyon, approximately 300 feet above, and approximately 1,000 feet horizontally from the creek channel. Therefore, it is not feasible that this site needs to be reserved to support coastal recreation uses. Additionally, adequate access to the beach and recreational opportunities exist in the Carmel area, such as Carmel Beach City Park and Stillwater Cove which are located near the mouth of Pescadero Creek. Therefore, the project is consistent with public access and recreational policies of the Coastal Act.

E. De Novo Coastal Permit Findings

For the reasons cited in the Substantial Issue section of this report, pages 5 to 22, and incorporated by reference into these de novo findings, the proposed project is inconsistent with those LCP policies cited, and therefore must be denied.

Alternatives

There is a mechanism by which water is provided to applicants wishing to develop or remodel structures on their property, and that is to be placed on the county’s water waiting list. As discussed in the



Substantial Issue section of this report, while constrained by the MPWMD water allocation program, Cal-Am is the water company authorized to provide water in the urban service area of the County and is regulating the orderly connection of water service for new development. A similar approach is used in other jurisdictions that have limited public services available (eg., Cambria, Pacific Grove, San Mateo mid coast, etc.). The applicant is already on the list (number 63 out of 101), and will receive service when their number comes up, and is therefore provided with an alternative to the proposed project.

Additionally, as described previously, Cal-Am and Monterey Peninsula Water Management District are currently searching for additional water supplies. Current alternative strategies include implementation of groundwater injection wells, use of reclaimed wastewater for irrigation purposes, and water conservation efforts that include retrofitting or replacing water-using appliances and fixtures and retaining native drought resistant vegetation and incorporating xeriscape principles into landscaping designs.

A second alternative available to the applicant is to request that Monterey County amend its LCP to allow private services in urban areas. Since the County's Local Coastal Program makes it clear that residential development in urban areas must use urban services, the only other way for the County to approve wells in urban service areas would be to amend the its LCP. However, any such amendment would have to examine the potential cumulative impacts of such activities, for example: would development densities have to be decreased?; what would happen to the current utility districts?; would these wells be temporary until other public sources were found or would they be permanent?; would only potable wells be allowed, or also non-potable wells for supplemental water?; how would the use of essentially rural utility services to support urban development be consistent with Coastal Act Section 30250²? These are examples of the kinds of questions the County would have to look at in developing such an amendment. Additionally, the County would have to consider whether there would be withdrawal limits and resolve how to deal with equity issues that may arise. If an LCP amendment was approved, it might also require only temporary uses of the well or require that development relying on a temporary well in an urban area would not be eligible for an emergency hook-up to the existing water utility.

F. California Environmental Quality Act (CEQA)

The County determined that this permit was exempt from CEQA review. However, this report has identified and discussed certain additional potential adverse impacts (ESHA, land use and water resource issues) not fully addressed by the local government. The test well is located within the Cal-Am service area and while currently constrained by the lack of available water, the applicant is on the water waiting list and so has a less environmentally damaging alternative than using the existing test well as a water supply well. Therefore, as there are feasible alternatives that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA), this application must be denied.

² **Coastal Act Section 30250.** (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

